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No. [redacted] 321

In the

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,

Petitioners,

vs.

RAYMOND SCOVILLE, A Minor, and MERRILL SCOVILLE, As Father and Next Friend; ARTHUR BREEN, A. Minor, and JERRY BREEN, As Father and Next Friend,

Respondents.

ANSWER TO PETITION FOR CERTIORARI

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The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1754

BOARD OF EDUCATION OF JOLIET TOWNSHIP HIGH SCHOOL DISTRICT 204, COUNTY OF WILL, STATE OF ILLINOIS; ARTHUR L. BRUNING, DAVID R. ROSS, HOWARD JOHNSON and CLAYTON WINTERSTEEN,

Petitioners,

vs.

RAYMOND SCOVILLE, A Minor, and MERRILL SCOVILLE, As Father and Next Friend; ARTHUR BREEN, A Minor, and JERRY BREEN, As Father and Next Friend,

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ARGUMENT

This case comes to this Court on a Record in which no evidence was taken by the Trial Court, defendants' Motion To Dismiss the Complaint having been granted.

The Seventh Circuit sitting *en banc* held that plaintiffs could not be punished without a judicial evidentiary hearing in which competing interests were balanced and in

which the defendants sustained their burden of proving that the distribution of plaintiffs' journal posed an immediate threat of substantial disruption of or material interference with educational activities.

There is no conflict of the instant matter with either *Norton* v. *Discipline Committee of East Tennessee State University*, 419 F. 2d 195 (6th Cir., 1969), or *Jones* v. *State Board of Education of and for the State of Tennessee*, 407 F. 2d 834 (6th Cir., 1969).

In *Norton* the Court found that plaintiffs' speech was unprotected only after conducting an evidentiary hearing in which testimony was taken concerning the objective probabilities that the speech alleged to be protected would cause material disruption at the school. The record in the instant matter indicates that unlike *Norton*, neither the school authorities, nor the Trial Court made any evidentiary findings that the publication could have caused such material disruption. In fact, the Trial Court expressly admitted that "[it] must be assumed true in passing on the pending motion to dismiss, that the distribution of 'Grass High' created no disturbance which did, or could have caused, any commotion or disruption of classes." (Petition For Certiorari, Appendix A-2).

Unlike the record in the instant matter, in *Jones*, school authorities and the Trial Court found that the plaintiffs had "disrupted a meeting of the student body;" further one of the plaintiffs did not tell the truth at certain disciplinary hearings. 407 F. 2d 834, 836.

School administrators do have the right to prevent "substantial disruption or material interference" before it occurs. However, petitioners must establish such an immediate danger with objective evidence of all the circumstances, rather than with just their personal subjec-

tive fears arising from examination of words taken out of context. *Tinker* v. *Des Moines School District,* 393 U.S. 505 (1969); *Brandenburg* v. *Ohio,* 395 U.S. 444 (1969).

Petitioner's contention that certain words alone regardless of contrary evidence of their non-injurious effect, are per se unprotected, would expressly conflict with previous holdings of this Court in *Pickering* v. *Board of Education,* 391 U.S. 563 (1968), *Brandenburg* v. *Ohio,* 395 U.S. 444 (1969), *Wood* v. *Georgia,* 370 U.S. 375 (1962), *Dennis* v. *U.S.,* 341 U.S. 494 (1951), *Yates* v. *U.S.,* 354 U.S. 298 (1957) and *Bridges* v. *California,* 314 U.S. 252 (1941).

CONCLUSION

In finding that plaintiffs-respondents were entitled to an evidentiary hearing, the Seventh Circuit applied established principles of law. It is respectfully submitted that the Petition For Certiorari be denied.

Respectfully submitted,

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